

December 4, 2017

**VIA ECFS**

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Notice of Ex Parte Presentation**  
WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this letter provides notice that on November 30, 2017, Michael Skrivan, Vice President Regulatory of Consolidated Communications Companies ("Consolidated"), John Barnicle, President and Chief Executive Officer of Peerless Network, Inc. ("Peerless"), and Robert McCausland, Vice President, Regulatory and Government Affairs of West Telecom Services, LLC ("West") along with the undersigned and Allen Zoracki, counsel for Consolidated, Peerless and West (collectively, "Consolidated, Peerless and West Representatives") met separately with:

- (1) Claude Aiken, Legal Advisor, Wireline, to Commissioner Clyburn;<sup>1</sup>
- (2) Amy Bender, Legal Advisor, Wireline, to Commissioner O'Rielly;
- (3) Wireline Competition Bureau ("WCB") staff that included Lisa Hone, Pamela Arluk, Lynne Engledow, Victoria Goldberg, Gil Strobel, John Hunter, Irina Asoskov, William Andrie, Gregory Capobianco, Edward Krachmer, Richard Kwiatkowski, Rhonda Lien, Joseph Price, Douglas Slotten, and Shane Taylor. Peter Trachtenberg from the Wireless Telecommunications Bureau also joined this meeting.
- (4) Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety, to Commissioner Rosenworcel; and
- (5) Jamie Susskind, Chief of Staff and Legal Advisor to Commissioner Carr.

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<sup>1</sup> Julie Oost, Vice President, Regulatory Affairs and Contracts, of Peerless also participated in this meeting via teleconference.

On December 1, 2017, the Consolidated, Peerless and West Representatives, with the exception of John Barnicle and the addition of Brian Carr, Vice President Carrier Services of Consolidated, met with Jay Schwarz, Wireline Advisor to Chairman Pai on the same matters.<sup>2</sup>

During each of these meetings, the attached handout was distributed and discussed along with related points previously made in filed comments.<sup>3</sup>

In addition, during one or more of these meetings, Consolidated, Peerless and West emphasized that:

- The optimal approach for addressing traffic aggregation issues is a requirement that carriers provide direct interconnection at their network edge, for both originating and terminating traffic, where justified by traffic volumes.

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<sup>2</sup> Brian Carr and Allen Zoracki participated in this meeting via teleconference.

<sup>3</sup> Comments of Consolidated Communications Companies, Peerless Network, Inc., and West Telecom Services LLC in Opposition to Ad Hoc's Request Concerning the Treatment of 8YY Traffic for Access Charge Purposes, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92 (filed July 31, 2017), *available at* <https://ecfsapi.fcc.gov/file/107310972719931/2017-07-31%20Comments%20of%20Consolidated%2C%20Peerless%2C%20and%20West%20in%20Opposition%20to%20Ad%20Hoc's%20Request.pdf>; Reply Comments of Consolidated Communications Companies, Peerless Network, Inc. and West Telecom Services LLC in Opposition to Ad Hoc's Request Concerning the Treatment of 8YY Traffic for Access Charge Purposes, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at 1-14 (filed Aug. 15, 2017), *available at* <https://ecfsapi.fcc.gov/file/10815038377009/2017-08-15%20Reply%20Comments%20of%20Consolidated%2C%20Peerless%2C%20and%20West.pdf>; Comments of Peerless Network, Inc.; West Telecom Services, LLC; Peninsula Fiber Network, LLC; Alpha Connect, LLC; Rural Telephone Service Company, Inc. d/b/a Nex-Tech; Nex-Tech, LLC; and Tennessee Independent Telecommunications Group, LLC d/b/a iRis Networks, WC Docket No. 10-90; CC Docket No. 01-92, at 11-23 (filed Oct. 26, 2017), *available at* <https://ecfsapi.fcc.gov/file/1026216424632/2017-10-26%20Comments%20of%20Peerless%2C%20West%2C%20Peninsula%20Fiber%20Network%2C%20Alpha%20Connect%2C%20Nex-Tech%2C%20and%20iRis%20Networks.pdf>; Reply Comments of Peerless Network, Inc.; West Telecom Services, LLC; Peninsula Fiber Network, LLC; Alpha Connect, LLC; Rural Telephone Service Company, Inc. d/b/a Nex-Tech; Nex-Tech, LLC; and Tennessee Independent Telecommunications Group, LLC d/b/a iRis Networks, WC Docket No. 10-90; CC Docket No. 01-92, 11-14 (filed Nov. 20, 2017), *available at* <https://ecfsapi.fcc.gov/file/1120580029282/2017-11-20%20Reply%20Comments%20of%20Peerless%2C%20West%2C%20Peninsula%20Fiber%20Network%2C%20Alpha%20Connect%2C%20Nex-Tech%2C%20and%20iRis%20Networks.pdf>.

- Despite the transition of terminating switched access rates to bill-and-keep, ***national wireless carriers are, on information and belief, engaging in traffic aggregation schemes at the terminating end of calls.*** By refusing direct interconnection (and in some cases terminating existing connections altogether) for all terminating traffic or certain types of terminating traffic (*e.g.*, interMTA and/or wholesale traffic), these wireless carriers are forcing such terminating traffic to be routed through their “intermediate carrier partners” or “affiliates” and as a result, originating carriers no longer can terminate such traffic to these wireless carriers on a bill-and-keep basis.
- The market inefficiencies and anti-competitive effects created by the traffic aggregation and arbitrage schemes of these national wireless carriers far outweighs other traffic aggregation allegations.
- The Commission can impose a direct interconnection requirement as a short-term solution pursuant to the Further Notice of Proposed Rulemaking associated with the *2011 USF/ICC Transformation Order*, which directly asked:

Should the Commission interpret section 251(a)(1) to allow the carrier requesting interconnection to decide whether interconnection will be direct or indirect or should we otherwise formally designate one of the carriers as entitled to insist upon direct (rather than indirect) interconnection? If so, which carrier should be entitled to make that choice, and how would such a framework be implemented?<sup>4</sup>

- The Commission should resolve these questions ***now*** by promulgating a direct interconnection requirement, such as the one proposed by Consolidated, Peerless and West,<sup>5</sup> that allows a requesting carrier with sufficient volumes of traffic to obtain direct interconnection at the network edge.
- This short-term solution targeted to eliminate arbitrage is far superior to other, overly-broad proposals, such as the flash-cutting of originating 8YY traffic to bill-and-keep, which would both (1) upend legitimate carrier business models that rely on originating access revenue streams and (2) drastically change existing expectations of both carriers and consumers associated with 8YY calling.

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<sup>4</sup> *In the Matter of Connect America Fund, Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 1383 (2011) (“*2011 USF/ICC Transformation Order*”) (subsequent history omitted).

<sup>5</sup> See attached at Page 2.

- If the FCC holds that originating 8YY access services must go to bill-and-keep (which it shouldn't) and carriers are not compensated for processing 8YY calls or otherwise prohibited from charging for such calls (assuming FCC rule 64.1504 applied to such non-information service calls), carriers would have to give serious consideration about discontinuing 8YY calling altogether. This of course is an end result the 8YY called party (i.e., customer of the 8YY number) would not want.

During the meeting with WCB staff, a question was asked about the difference between Local Number Portability ("LNP") and 8YY number portability. As a preliminary response to that question, the 8YY database (which is provided via the Service Management System ("SMS")) is an entirely separate database used for 8YY number portability and queries are more complex than LNP queries, as 8YY services rely on many functionalities driven by the 8YY database that are unique to the 8YY services, including alternate routing, ring-to, and time-of-day routing, etc.

If you have questions or need additional information, do not hesitate to contact me.

Sincerely,



Philip J. Macres

*Counsel for Consolidated Communications  
Companies, Peerless Network, Inc., and  
West Telecom Services, LLC*

cc:

Jay Schwarz (all via email)  
Claude Aiken  
Amy Bender  
Jamie Susskind  
Travis Litman  
Lisa Hone  
Pam Arluk  
Lynne Engledow  
Victoria Goldberg  
Gil Strobel  
Peter Trachtenberg  
John Hunter  
Irina Asoskov  
William Andrie  
Gregory Capobianco  
Edward Krachmer  
Richard Kwiatkowski  
Rhonda Lien  
Joseph Price

Douglas Slotten  
Shane Taylor

**I. THE FCC SHOULD REJECT REQUESTS TO TRANSITION 8YY ORIGINATING ACCESS SERVICES TO BILL-AND-KEEP**

- Adoption of bill-and-keep for 8YY traffic is contrary to the purpose of a toll-free call, which is to alleviate the calling party from paying for the call, and to shift those fees to the toll-free customer, the called party.
  - Perversely defeats the expectations of both carriers and customers with respect to 8YY service.
  - 8YY callers would eventually be billed for making 8YY calls, contrary to pervasive commercial advertising that such calls are toll free, which could lead to consumer uproar.
- 8YY traffic makes up a huge portion of overall originating traffic, and thus adoption of bill-and-keep for originating 8YY traffic would be very harmful to carriers and customers.
  - Consolidated previously reported pre-merger originating 8YY traffic accounts for 44% of its overall originating traffic and switched access revenues with end users of its ILECs.
  - Three ITTA members reported that their total originating 8YY traffic ranged from slightly over 30% to slightly over 60% in 2016.<sup>1</sup>
  - Certain Nebraska carriers recently reported that originating interstate 8YY traffic accounts for 57% of their total interstate originating switch access traffic.<sup>2</sup>
  - NCTA reports that transitioning 8YY traffic to bill-and-keep “would cost the largest cable operators almost \$70 million annually and produce an unwarranted windfall for AT&T and other 8YY providers.”<sup>3</sup>
- The portrayal by Ad Hoc and others of the “historic” treatment of 8YY traffic is both incorrect and misleading.
  - The rates for terminating end office switching, tandem-switched transport, and tandem switching *have never applied to the originating end of 8YY traffic*.
- The record lacks evidence to support a wholesale, industry-wide overhaul of charges for originating 8YY traffic.
  - Proponents of bill-and-keep primarily raise anecdotal allegations of access stimulation schemes concerning the actions of a *few carriers*, and thus do not provide a valid basis for *industry-wide*, flash-cut regime change.
  - Such isolated issues can be addressed by the FCC’s existing access stimulation rules and 208 complaint procedures.
  - Complainants would rather exploit the entire industry by transitioning to bill-and-keep under the guise of alleged access stimulation, which would allow 8YY providers to “free ride” on the services of other carriers when providing 8YY services.

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<sup>1</sup> Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at 5 (filed July 31, 2017).

<sup>2</sup> Comments of the Nebraska Rural Independent Companies in Response to June 29, 2017 Public Notice, WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92, at 5 (filed July 31, 2017).

<sup>3</sup> Letter from Steven Morris, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-363 & 10-90, at 2 (filed Nov. 16, 2017).

- There is no evidence that a decrease in access costs would be passed on to consumers, as 8YY is an oligopoly with AT&T, Verizon and CenturyLink/Level 3 controlling virtually 90% of the market.
- If the FCC were to adopt any regime change, it should do so by way of a holistic approach with balanced rule transitions, including a multi-year phase-in and revenue recovery mechanisms, along with coordinated industry and consumer re-education efforts to explain that 8YY services are no longer free to the caller.

## **II. TO ADDRESS ARBITRAGE CONCERNS, THE FCC SHOULD IMMEDIATELY ADOPT A DIRECT CONNECT REQUIREMENT.**

- The FCC should immediately require that all wireline and wireless carriers make direct connections available to requesting carriers that send or receive at least four (4) T-1s of originating and/or terminating traffic per month (or for IP networks or other modern technology, 200,000 monthly MOUs sustainable average over a 30-day period), ***for all traffic—i.e., all local and long distance traffic along with all wholesale and retail traffic*** (the “Four T1 Standard”), with a zero rate per MOU for all terminating traffic (“Direct Connect Requirement”).
  - The Four T1 Standard is reasonable by industry standards.
- With direct connects, IXCs could receive their 8YY traffic directly from the originating carrier and avoid tandem switching and transport charges where justified by traffic volumes.
- With direct connects, wireline carriers could send traffic directly to wireless carriers without going through their “intermediate carrier partners” and avoid their unreasonable charges.
  - The refusal of certain national wireless carriers to allow direct connects demonstrates why the FCC needs to adopt the Direct Connect Requirement now.<sup>4</sup>
    - See attached Example 1 and Example 2 of why the FCC needs to adopt the Direct Connect Requirement.
    - The wireless carriers’ conduct violates the spirit of Section 251(a)(1).
    - The wireless carriers’ conduct violates Sections 201 and 202 of the Act and improperly circumvents the FCC’s established intercarrier compensation regime by indirectly assessing charges that cannot be assessed directly.
    - By refusing direct connects, the intermediate carrier partners have a bottleneck monopoly or duopoly on delivering terminating traffic to the wireless carriers’ end-users, which allows them to assess unjust and unreasonable MOU charges to terminate such traffic. For example, Inteliquent’s rate deck pricing went up by **400%** after it entered into (on information and belief) a revenue sharing agreement with T-Mobile.
- The Direct Connect Requirement will prevent arbitrage and will promote competition, the public interest, network reliability, and public safety.
- The Direct Connect Requirement has wide support from parties on both sides of the 8YY treatment issue. AT&T, CenturyLink, ITTA, and Verizon have all expressed support.

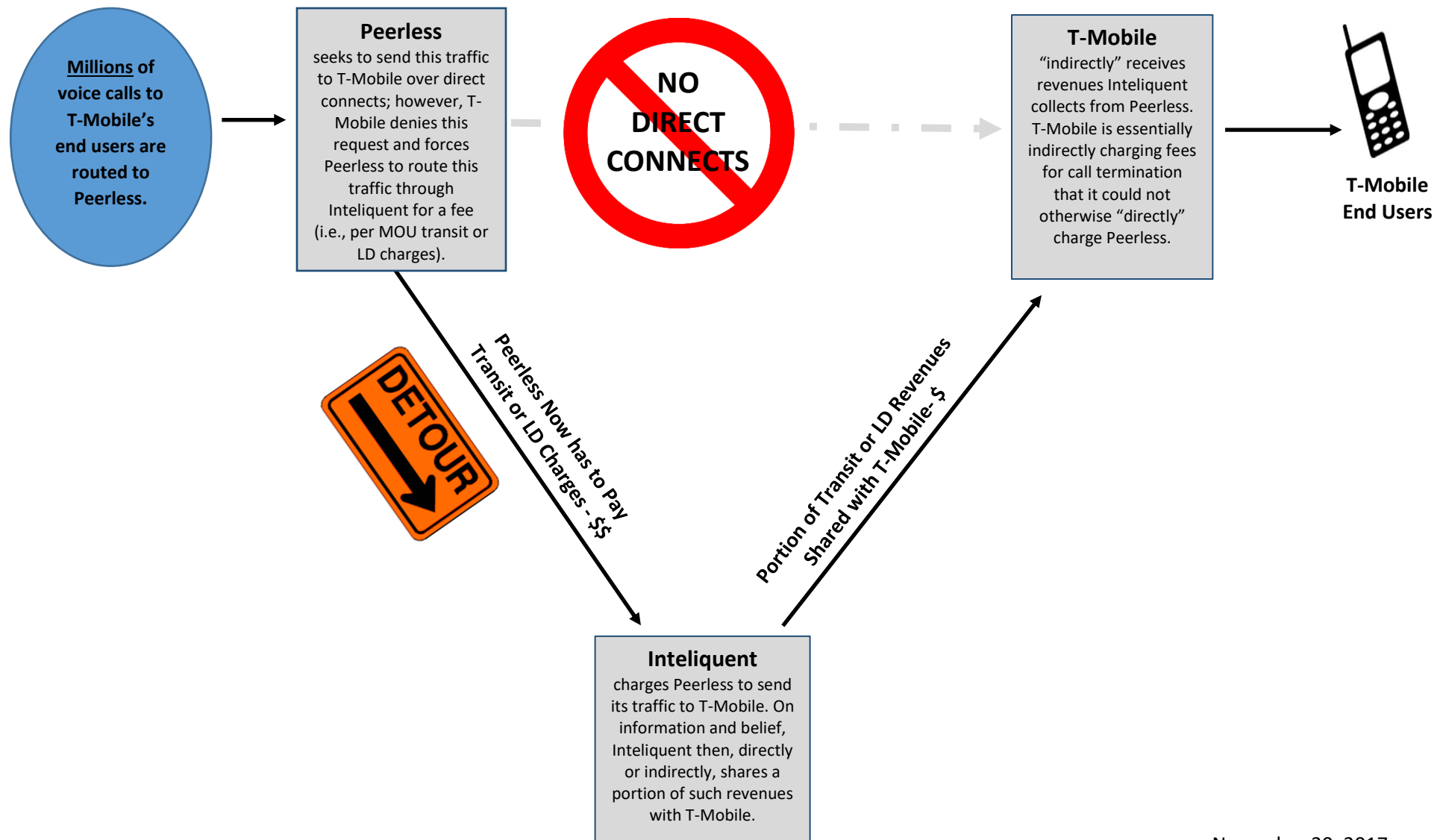
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<sup>4</sup> See also Reply Comments of O1 Communications, Inc., WC Docket No. 10-90; CC Docket No. 01-92, at 3-9 (filed Nov. 20, 2017) (urging a direct connect requirement and describing T-Mobile’s and AT&T Mobility’s refusals for direct connects).

## EXAMPLE 1 OF WHY THE FCC NEEDS TO ADOPT THE “DIRECT CONNECT REQUIREMENT”

T-Mobile engages in a traffic aggregation and arbitrage scheme by (1) denying Peerless’s request to send, over direct connects, all of its terminating traffic to T-Mobile’s end users, and (2) then forcing Peerless to inefficiently route such traffic through Inteliquent.

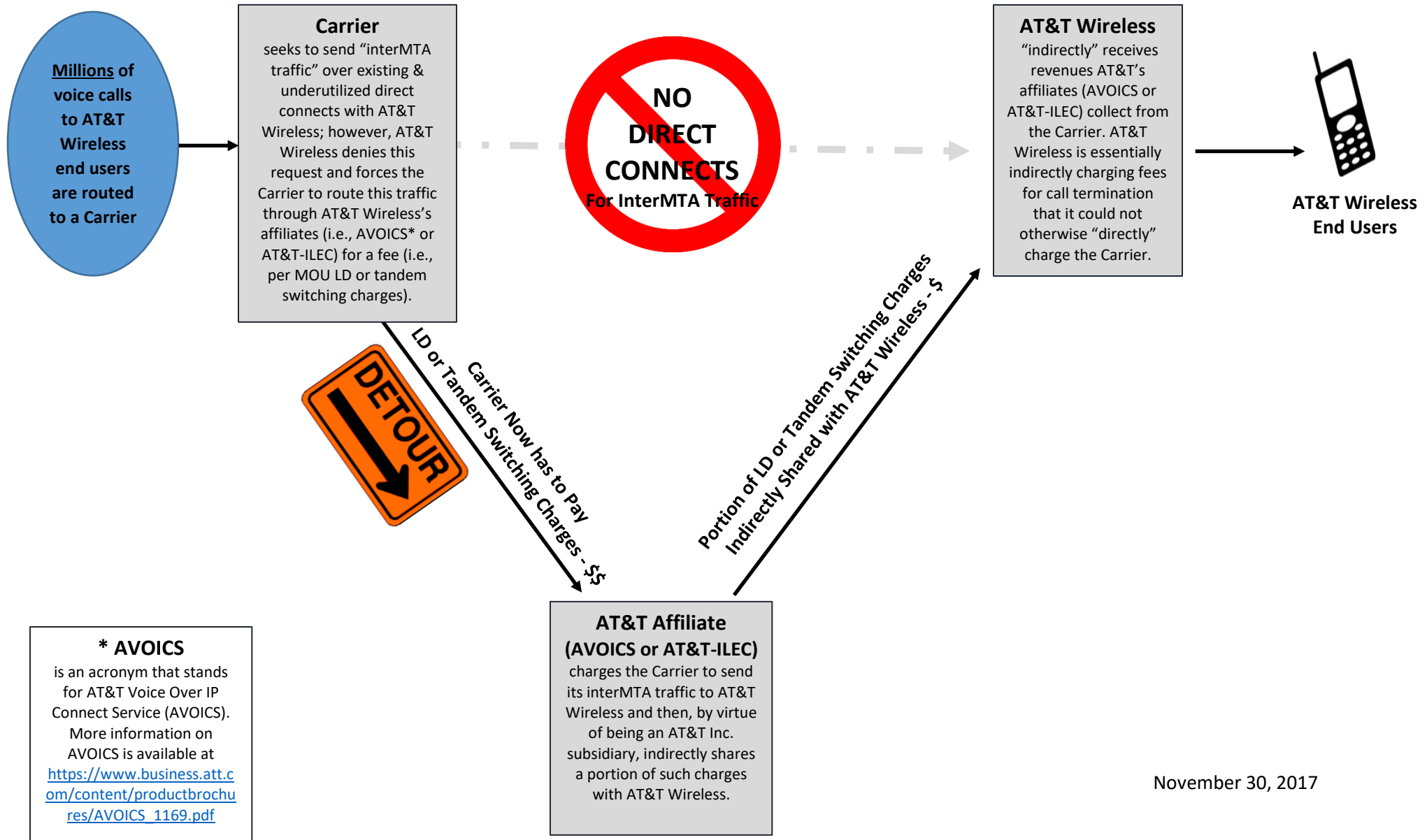
Over a direct connects, Peerless does not pay per MOU transit or LD charges. Other carriers are confronting the same issue.





## EXAMPLE 2 OF WHY THE FCC NEEDS TO ADOPT THE “DIRECT CONNECT REQUIREMENT”

AT&T Wireless engages in a traffic aggregation and arbitrage scheme by (1) denying a Carrier’s request to send, over direct connects, interMTA traffic to AT&T Wireless’s end users, and (2) then forcing the Carrier to inefficiently route such traffic through AT&T Wireless’s affiliates. Over direct connects, the Carrier does not pay per MOU LD or tandem switching charges.



November 30, 2017